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DECLARATION
OF
RIGHTS, RESERVATIONS, RESTRICTIONS AND COVENANTS
OF
BIRCH BAY VILLAGE

THIS INDENTURE AND DEDICATION of Rights, Reservations, Restrictions and Covenants made this 20th day of June, 1966 by and between BIRCH BAY INVESTORS, a limited partnership, and GEORGE B. BUCHAN and EDITH W. BUCHAN, his wife,

W I T N E S S E T H :

RECITALS:

a) That BIRCH BAY INVESTORS as owner in fee simple (and referred to herein as Owner) and GEORGE B. BUCHAN and EDITH W. BUCHAN, his wife, as mortgagees, have concurrently herewith and as a part hereof, declared a certain plat, denominated BIRCH BAY VILLAGE DIVISION NO. 1, of certain real property in Whatcom County, State of Washington, more particularly described on said plat recorded in Volume 9 of Plats, Page 71 + 92, records of Whatcom County (which plat is sometimes referred to hereinafter as "said plat"), which real property is included in the land situated in Whatcom County, State of Washington, described in Exhibit "A" hereto and which by this reference is made a part hereof (all of which is hereinafter referred to simply as "said land").

b) That the parties hereto desire to set forth the rights, reservations, restrictions, covenants, easements, liens and charges that pertain to said land and to which said land is hereby subjected and which in the future may be made applicable to other plats of real property included within said land, or to other land adjoining, contiguous or adjacent thereto as the Owner may declare, each and all of which is

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and are for the benefit of said land, and any other subjected thereto by declaration of the Owner, and shall constitute covenants running with the land, for the purpose of maintaining the desirability of said land and to establish suitable use and architectural design; and

c) That the parties hereto desire to provide for the means to enforce said rights, reservations, easements, liens and charges and for necessary maintenance and for delegation of right to establish building restrictions, future use, responsibilities, rights and obligations through a community organization consisting of a non-profit community club that includes as members those who purchase any lot, tract or parcel of or said land, or of other land that may be impressed with this Declaration by Owner by appropriate reference hereto.

Declarations:

In consideration of these presents and the execution hereof, the parties hereto do hereby make the following grant of rights and declare that said land is and shall be held and conveyed upon and subject to, and there is hereby established, confirmed and impressed upon said land the reservations, restrictions, covenants, easements, liens and charges hereinafter set forth and is hereby made subject to, bound by and impressed with the provisions hereinafter set forth as running with the land and hereby made applicable to said land and all future grantees, assignees and successors of any interest therein, to-wit:

1) Reservation of Oil, Gas, Minerals, etc.

That there is reserved to the Owner all oil, gas, coal, ores, minerals, fossils, etc. and the right to explore, open, develop, drill, contract and remove them and as may be required by the provisions of and subject to deeds from the State of Washington recorded under Auditor's file No. 148199

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and 156625 and contained in deed dated May 24, 1946 executed by Larrabee Real Estate Company, a Washington corporation, to George B. Buchan and Edith W. Buchan, his wife, recorded under Auditor's file No. 623063, records of Whatcom County, Washington.

2) Reservation of Right to make cuts, fills, etc.

There is reserved to the Owner the right to make all necessary slopes for cuts and fills upon the lots, blocks, tracts and parcels of said plat in the reasonable original grading of the roads, ways and walkways (which phrase shall mean and include wherever used herein, any roads, streets and places, avenues, drives and paths over which persons or vehicles or both may travel) and easement ways, whether shown on said plat or otherwise reserved or granted, or in the subsequent grading necessary for acceptance by a municipality having jurisdiction in the event of dedication to public use, provided that the Owner shall assign said reserved rights to the community club as hereinafter provided.

3) Reservation of right to drain, to clear brush, etc.

There is hereby reserved to the Owner the right to drain all roads, ways, walkways, easement ways and areas, over and across any lot or lots, blocks, tracts and parcels where water might take a natural course after the grading thereof and the right (but without the obligation to do so) to enter upon any lot, block, tract or parcel of said plat to trim, cut and remove brush, trees, stumps, noxious weeds or growths, provided that the Owner shall assign said reserved rights to the community club as hereinafter provided.

4) Reservation of easements

Easements for drainage, sewers, water pipes and utilities facilities and service (including but not limited

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to water supply, electricity, gas, telephone, television) are hereby reserved over, under, upon, in and through all roads, ways and walkways and over, under, upon, in and through a two and a half foot wide strip along each side of the interior lot lines and the front and rear five feet of each lot, tract or parcel of said plat, in which to install, lay, construct, repair, renew, operate, maintain and inspect underground pipes, sewers, conduits, cables, wires and all necessary facilities and equipment for purpose of serving said plat and said land and any other land adjoining, contiguous or adjacent that may be impressed by Owner with this Declaration, together with the right to enter upon such easement areas, lots, tracts, parcels, roads, ways and walkways for or pertaining to the aforesaid. The Puget Sound Power and Light Company, the Pacific Northwest Bell Telephone Company, the West Coast Telephone Company, their successors and assigns, and other utility companies, districts and agencies, are included hereby and granted full rights under the aforesaid easements.

5) All roads, etc. are private property

All roads, ways and walkways, whether shown on said plat or not, that the Owner may construct or cause to be constructed upon said land, and areas of common use (whether designated on said Plat or otherwise or hereafter by the Owner) are reserved to the Owner as private property. Areas of common use may be designated by the Owner either in said Plat, in subsequent plats of Birch Bay Village, or by written reservation, grant or conveyance and generally consist of any parks, playgrounds and the area of second class tidelands that are unplatted and which are between and within

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the boundary lines (extended seaward toward the waters of Birch Bay) of those plats that may be declared by the Owner and are bounded in said direction by such tidelands, excepting and excluding that area that may be occupied by a marina, golf course, or by clubhouse grounds of the community club mentioned below. That the reserved rights of the Owner may be assigned as provided below. Title to the roads shall be conveyed by Owner to the community club within four years from time of construction and title shall be held by the community club, subject to its right to dedicate them to public use. The community club shall have the responsibility and the right to collect assessments from the owners of any lot, tract or parcel for road maintenance costs, as hereinafter provided, and shall keep such road maintenance funds in an account separate from and not transferable to other funds, with Whatcom County having a continuous right to inspect said accounts. If inspection of these accounts and the condition of the road indicate that road maintenance is not satisfactory, Whatcom County may then take whatever steps are necessary to insure compliance. In the event the community club elects to dedicate any of the roads for public use, no offer of dedications shall be effective until the roads are brought up to Whatcom County standards adopted by the Board of County Commissioners under date of December 9, 1958. Further the dedications shall also state that no request for county assistance with road maintenance shall be made unless the roads are improved to county standards and so dedicated for public use and the dedication is accepted by Whatcom County and further provision is made for the right of entry by county road

employees if necessary.

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6) Grant of Right of Travel and Use

The Owner hereby grants to the purchaser (which term shall include not only fee simple title holders but also anyone who acquires hereafter an interest therein that includes a right of possession) of, and which shall be appurtenant to and accompany any of, the lots, parcels or tracts of said plat, the privilege to make usual and reasonable use of said roads, ways and walkways and common areas (as or may be designated), subject to provisions hereof and to the rights of all other purchasers and of the Owner (including the right to extend to purchasers of lots, tracts or parcels of other land adjoining, contiguous or adjacent that may be impressed by Owner with this Dedication, the right to use such roads, walks and walkways and common areas) in conformity with the regulations, rules, conditions and charges, if any, which may be imposed by the Owner, or its successor, the community club mentioned below.

7) Conditions to any purchase

All purchasers of any lot, tract or parcel in said plat must be acceptable to the Membership Committee for membership in the community club, to be known as the Birch Bay Village Community Club, Inc., a non-profit corporation, (herein referred to as "the community club" and to be formed by the Owner or its nominees) and must become members of the community club. The said Owner (directly or through its nominee) shall have the right to exercise the function, the determination and selection of said Membership Committee, until such time that the community club assumes control as hereinafter provided or while its committee does not function.

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8) Covenants and Restrictions

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a) Land Use: Each lot, tract or parcel

shall be used only for single family residential purposes, unless otherwise stated on said plat or designated by Owner for other use or hereafter approved in writing by the Owner or after control of the architectural and maintenance committee has been assumed by the community club as hereinafter provided, then by the approval of said committee. No residential lot, tract or parcel shall be divided and sold or resold or ownership changed or transferred, whereby any such portion of the plat shall be less than the area shown on the face of the plat.

b) Architectural Control: No building, fence

or other structure shall be commenced, constructed, placed, remodeled or maintained on any such lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the architectural control and maintenance committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and location with respect to topography and finish grade elevation. Until the community club assumes control as hereinafter provided, the architectural control and maintenance committee shall be three in number and shall be composed of:

i) A general partner of the Owner or his designate; ii) a representative of the real estate broker appointed by the Owner for sale of the lots of said plat; and iii) an owner of one of said lots who shall be appointed by the Owner.

As long as the architectural control and maintenance committee consists of three individuals as provided above, the Owner may remove any member thereof and name his successor, and a majority of the committee may designate a representative

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to act for the committee. When the community club appoints the architectural control and maintenance committee it may designate a representative to act for it. No compensation shall be paid for services performed by the architectural control and maintenance committee. The architectural control and maintenance committee's approval or disapproval required herein shall be in writing. In the event the architectural control and maintenance committee fails to approve or disapprove, within sixty (60) days, any plans and specifications submitted to it, or if no suit to enjoin the construction of any structure has been commenced prior to the completion thereof, the architectural control and maintenance committee's approval will no longer be required and this sub-paragraph shall be deemed to have been fully complied with.

c) Building Limitations. No building shall be erected, altered, placed or permitted on any residential lot in said plat that exceeds 18 feet in height from natural ground level at the site, nor at a distance closer than 25 feet from the front line of any lot, tract or parcel, or from any roadline which borders it or by which it is bounded (except that a garage may be located within 5 feet of any rear or side property line) nor nearer than 5 feet from an interior lot line. All buildings and structures shall be completed on the exterior, including paint or other suitable finish, within six (6) months of commencement. No structure of temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used or placed on any lot, tract or parcel of said plat at any time as a residence, except

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house trailers for residential purposes may be located on any plat of said land or land adjoining, contiguous or adjacent thereto which is designated as a Mobile Division, in accordance with the covenants, restrictions and conditions set forth in such plat or in effect thereto. In any such Mobile Division, any trailer or mobile home, before being occupied, must be provided with water connection, septic tank and electrical power hookup and be placed on a properly prepared slab in accordance with the approval of the architectural control and maintenance committee. The architectural control and maintenance committee shall have the absolute right to restrict or prohibit the construction of a building or other structure even though such a building or structure is not otherwise restricted or prohibited herein, if in said committee's sole discretion such building or structure would be detrimental to the development of said land and said plat. Further said committee, before or after the community club assumes control, may consent in writing to relief under the foregoing and may from time to time, by rules and regulations duly adopted, make changes in any of the foregoing which have future or prospective effect.

d) Nuisances. No noxious or offensive activities shall be carried on upon any lot, tract or parcel of said land nor shall anything be done thereon which may or may become an annoyance or a nuisance to the neighborhood.

e) Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said land, except that dogs, cats and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose.

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f) Signs. No sign of any kind shall be displayed to the public view on any lot, except one professional sign of not more than one foot square, one sign of not more than five feet square advertising the property for sale or rent, but excluding from the aforesaid signs used by the Owner or its exclusive sales agent or a builder to advertise the property during the construction and sales period.

g) Firearms. There shall be no discharging of arms or hunting on said land.

h) Trees, shrubs. No trees or natural shrubbery shall be removed unless approved in writing by the architectural control and maintenance committee, it being the intention to preserve natural growth, in accordance with the Owner's plan of development. No trees, hedges, shrubbery or plantings of any kind whatsoever in excess of six feet in height shall be placed, planted or maintained on any of the said property, nor shall any such tree, hedge, shrub or planting be allowed to grow in excess of such height, without written permission of the architectural control and maintenance committee.

i) Fires, refuse. No outdoor fires for the burning of wood, trash or debris shall be started without first obtaining a valid fire permit during seasons when required and no lot shall be used or maintained as a dumping ground for rubbish, refuse or garbage. Garbage or other waste shall not be kept excepting in sanitary containers. All incinerators or other equipment for the disposal or storage of such matter shall be kept in a clean and sanitary condition, and all incinerators shall be approved before installation or use by the architectural control and maintenance committee.

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j) Sale or Lease. None of the said land shall be occupied, leased, rented, conveyed or otherwise alienated, nor shall the title or possession thereof pass to another without the written consent of the Membership Committee mentioned in paragraph 7 above, except that one taking by devise or inheritance shall need no such consent, but shall take subject to the restrictions of this Declaration; and except that any of said land may be mortgaged or subjected to judicial sale, provided that no purchaser at any judicial sale shall have the right to occupy, lease, rent, or convey or otherwise alienate any of said land, or any lot thereof, without the consent of the said Membership Committee. Notwithstanding the consent requirements hereinbefore set forth, no owner of any lot of the said land, except the Owner or its agents or assignee, shall sell said lot to one not otherwise a lot owner within the said property without first giving written notice to the said Membership Committee at least 30 days in advance of any such contemplated sale, which notice shall constitute an offer of first refusal to the Owner so long as it owns any of the said land, to purchase the said lot upon the same terms and at the same price being offered to any outsider. If the offer made by said notice is not accepted in writing within thirty days from the receipt thereof the sale may be concluded to any outsider at the same price and terms subject to the consent provisions hereinbefore stated. After the community club has assumed control of the Membership Committee as hereinafter provided, rules may be adopted whereby such consent may be granted or deemed to be granted other than as aforesaid.

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9) Breach, Reversion:

Any lot, tract or parcel of this or any plat of BIRCH BAY VILLAGE, or any annexations thereto which are made subject to this Declaration of Rights, Reservations, Restrictions and Covenants, shall revert to the Owner, its successor or assigns, in case of a breach of any provisions thereof, subject to any mortgage or lien for value thereon and a breach of any such provision shall of itself operate to cause reversion and extinguishment of the title upon the reasonable exercise of the declaration of such breach by the Owner or by its successor or assignee to whom such right of declaration may be specifically assigned.

10) Community Club

The Owner shall cause to be formed a community organization to include as members all purchasers of any lot, tract or parcel of said land, which organization shall be a non-profit corporation under Title 24 of the Revised Code of Washington, to be known as "Birch Bay Village Community Club, Inc." Among the objects and purposes of said community club shall be the furtherance and promotion of the community welfare of the purchasers of any lot, tract or parcel of said land and any adjoining, contiguous or adjacent which the Owner may cause to be platted and impressed with or made subject to this Declaration (all of which is included in the words "said platted land") including the holding of title to all roads, walks, walkways and common areas in said platted land, the regulation, use, care, construction, operation, repair, maintenance and preservation thereof and the

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facilities thereon and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of its members and their property in said platted land as such community club shall determine as provided by its Articles of Incorporation and By-Laws, and any amendments thereof duly adopted, including (without limitation by this mention) the regulation of use of property held by or controlled by the community club, payment of taxes, the setting of standards of care and maintenance of lots, parcels and tracts in said platted land and enforcement thereof, furnishing of protection, drainage, water distribution, and the like for the common good. Said community club shall be organized by or at the instance of the Owner, and in connection with his purchase the purchaser of each lot of said platted land shall become and must be acceptable for membership in said club, for which a fee of \$10.00 shall be charged by the Owner for the purchaser joining said club, and the purchaser agrees to be bound by said Articles of Incorporation and By-Laws and any amendments thereof duly adopted, and purchaser shall continue a member thereof while an owner of any lot, tract or parcel in said platted lands, subject to the Articles and By-Laws of said corporation (the word owner having the meaning of purchaser, i.e. the person entitled by deed or real estate contract to the possession and occupancy of a lot, tract or parcel in said platted land, subject hereto).

11) Assessments and Lien:

The community club shall be empowered to establish and collect dues and assessments upon lots in

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said platted land subject hereto for the common benefit of such lots, tracts or parcels as to utilities, roadways, property protection, drainage, landscaping, insurance, improvement, and payment of taxes upon common property and the holding of ownership or leasehold therein, or otherwise for common purposes, all as determined pursuant to the Articles and By-Laws of the community club. Subject to provision below as to first lien mortgages, such assessments shall constitute a personal obligation as well as a lien upon each such lot, tract or parcel as of the due date thereof, and such lien may be foreclosed by the community club in the same form and manner of procedure as the foreclosure of a real property mortgage lien under the laws of the State of Washington, each owner, and each party hereafter owning or claiming an interest in one or more lots, tracts or parcels within the platted land subject hereto, agreeing and recognizing that expenses of title examination and assurance, costs of attorneys of the community club, court costs and interest at 8% per annum shall be included with the amount of any delinquent assessment in the judgment of foreclosure of such lien. The authority to establish assessments and lien therefor against lots, tracts or parcels within said platted land subject hereto shall, as to each lot, tract or parcel, first arise when the same is first sold by deed or real estate contract from the Owner, its successors or assigns, as developer of a plat within said platted land, to a grantee or contract purchaser thereof. Assessments shall be assessed and collected on a fair and uniform basis as among lots, tracts or parcels subject thereto, subject only to such

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reasonable differential as may be established by the By-Laws of the community club between improved lots and unimproved lots. First mortgage liens placed upon any of said lots, tracts or parcels for the purpose of constructing a residence or other improvements thereon, which are recorded in accordance with the laws of the State of Washington, shall be, from the date of the recordation of such, superior to any and all charges, assessments and liens imposed pursuant to this Declaration.

12) Limit and Term of Covenants and Restrictions.

The covenants and restrictions set forth in paragraph 8 above are to run with the land and shall be binding on all parties and persons claiming under them for a period of 25 years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of all lots, tracts and parcels within the said platted land (as the term is defined in paragraph 10 above) has been recorded, agreeing to extinguish or change said covenants and restrictions in whole or in part.

13. Severability.

Invalidation of any one of the covenants and restrictions or any part hereof by judgment or court order shall in no wise affect any of the other provisions hereof, which shall remain in full force and effect.

14. Community Club Assumes Control

At the time the community club includes as members the purchasers of at least 90% of the lots, tracts and parcels

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within said platted land (as defined in paragraph 10 above) the control of the Membership Committee and of the Architectural Control and Maintenance Committee shall be turned over to the operation and control of the community club and the Trustees of the community club may be elected from its members at large as provided by the Articles of Incorporation and By-Laws, and the reserved rights remaining in the Owner which are provided for in Paragraphs 2, 3, 4, 5, and 6 (except for the Owner's right to extend to purchasers of lots, tracts or parcels of other land adjoining, contiguous or adjacent that may be impressed by Owner with this Declaration the right to use such roads, walks, walkways and common areas) shall be assigned to the community club, provided that the Owner may prior thereto turn over such control and make such assignment, provided further that the title to all roads shall be conveyed to the community club within the four (4) year period that is set forth in paragraph 5 hereof. After the time aforesaid when the community club assumes control above provided, or sooner if the Owner designates and requests the community club to do so, the community club shall have and is hereby charged with the authority and obligation of enforcement of the terms of this Declaration, or any parts hereof for which Owner specifically delegates enforcement to the community club. Enforcement may be by proceedings in equity or at law against any person or persons violating or attempting or threatening to violate any of the provisions of this Declaration, either to restrain such violation or to recover damages,

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or as alternate remedy by forfeiture under paragraph 9 if such right of declaration is specifically assigned to the community club by the Owner. Excepting such forfeiture right, in the event that the community club fails to take appropriate action for the enforcement of the covenants and restrictions hereof within a reasonable time after a violation or threatened or attempted violation is brought to its attention in writing, any person or persons then owning lots within the said property may take such steps in law or in equity as may be necessary for such enforcement. Any damages recovered in such enforcement proceedings shall inure to the benefit of the person or persons damaged by the violation involved. The party prevailing in such enforcement proceeding whether in law or in equity shall have from his opponent, such attorneys' fees as the court may deem reasonable.

15. Amendment.

The Owner reserves the right to amend this Declaration of Rights, Reservations, Restrictions and Covenants for any purpose that may change (but not increase) the requirements or burdens thereof with respect to any purchaser or his assignee, provided that such amendment may be made with respect to any provision, term or condition, without limitation, provided 66-2/3% of all of the then purchasers of any lot, tract or parcel of said platted land consent thereto in writing, and provided further that any or all parts or provisions of this Declaration may be revoked and terminated if the Owner and said 66-2/3% of all of the then said purchasers join in such revocation agreement and it is filed for record in Whatcom County (except as to the reserved rights in Paragraphs 1 - 5 inclusive and the grant in Paragraph 6).

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16. Notice.

The recording hereof with the Auditor of Whatcom County shall constitute notice of all of the terms and provisions hereof to each and every purchaser of any lot, tract or parcel in said platted land, whether further reference is made in their respective contract or deed or other instrument by which title is claimed.

IN WITNESS WHEREOF we have hereunto set our hands the day and year first hereinabove written.

BIRCH BAY INVESTORS,
a limited partnership

By Howard G. Riddell
Howard G. Riddell

Alice R. Riddell
Alice R. Riddell

By V. Keith Colman
V. Keith Colman

GENERAL PARTNERS

Jean P. Colman
Jean P. Colman

Their wives, joining in and in ratification of the foregoing

George B. Buchan
George B. Buchan

Edith W. Buchan
Edith W. Buchan, his wife

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this 10th day of June, 1966, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally

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appeared HOWARD G. RIDDELL, joined herein by his wife ALICE R. RIDDELL, and V. KEITH COLMAN, joined herein by his wife, JEAN P. COLMAN, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Emily H. Pletcher
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

STATE OF WASHINGTON }
COUNTY OF King } ss.

On this 20th day of December, 1966, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared GEORGE B. BUCHAN and EDITH W. BUCHAN, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged to me that they signed and sealed the said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Ollie H. Johnson
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

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EXHIBIT "A"

The southwest quarter, Government Lot 1; and that portion of the northwest quarter of the southeast quarter, lying south of the creek; ALL in Section 23, Township 40 north, Range 1 west, W.M., in Whatcom County, Washington, EXCEPT roads, TOGETHER WITH second class tidelands of, abutting on, around and adjacent to said Government Lot 1, and Government Lot 2.

Government Lots 1 and 2, Section 26, Township 40 north, Range 1 West, W.M., in Whatcom County, Washington; TOGETHER WITH second class tidelands of, abutting on, around and adjacent to said Government Lots 1 and 2.

The northeast quarter of the southeast quarter of Section 22, Township 40 north, Range 1 west, W.M., in Whatcom County, Washington, EXCEPT roads, and TOGETHER WITH an easement for roadway over the west 20 feet of the southeast quarter of the southeast quarter of said Section 22 and over the west 20 feet of the north 20 feet of Government Lot 3 and the east 20 feet of Government Lot 2 in Section 27, Township 40 north, Range 1, west, W.M., in Whatcom County, Washington.

Received for record at 2:30 P.M. JUN 27 1968

request of J. O. Johnson

WELLA HANSEN, CO. AUDITOR Whatcom Co. Wash

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